Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer Information	)	

To: The Commission

REPLY OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),[1] by its attorneys, hereby submits its Reply to Comments[2] filed in response to numerous Petitions for Reconsideration of the Commission's customer proprietary network information ("CPNI") rules.[3]

Based upon the record in this proceeding, the Commission should reconsider and revise its CPNI rules as they apply to CMRS providers. As has been demonstrated, certain CPNI rules will

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1/ RCA is an association representing the interests of small and rural cellular licensees providing commercial services to subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside. Formed in 1993 to address the distinctive issues facing rural cellular service providers, the membership of RCA includes affiliates of the only entities originally eligible for "B" block cellular licenses -- wireline telephone companies -- as well as rural "A" block carriers. RCA also represents small and rural PCS carriers.

2/ On May 8, 1998, RCA filed comments in support of the Cellular Telecommunications Industry Association's ("CTIA") Request for Deferral and Clarification of certain of the Commission's CPNI rules. CTIA had requested that the Commission delay for 180 days implementation of Sections 64.2005(b)(1) and (b)(3), while it considered the substantial and long-term negative impact that these rules will have on cellular/PCS providers' ability to furnish customers with the most advanced and cost-effective services.

3/ Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information, Second Report and Order, FCC 98-27, rel. Feb. 26, 1998 (" CPNI Order").

impede competition in the CMRS marketplace and disserve CMRS customers.

The record also supports a finding that the "flag" and "tag" computer safeguards are unnecessarily burdensome to small carriers, which have in place alternative mechanisms for protection of their customers' privacy.

I. THE CPNI RULES DEPRIVE CMRS CUSTOMERS OF INFORMATION THEY NEED AND EXPECT IN ORDER TO BENEFIT FROM COMPETITION IN THE CMRS MARKETPLACE.

Under the current CPNI rules, CMRS providers are prohibited from using CPNI, without the express permission of a customer, to market CPE and information services to that customer.[4] CMRS providers are also prohibited from using CPNI to "win-back" a customer who has switched to another provider, without that customer's express approval.[5] As parties to this proceeding have demonstrated, these restrictions limit customer access, on a timely basis, to CMRS services, and therefore illogically and unnecessarily curtail CMRS customers' ability to take advantage of a competitive CMRS market.

As parties to this proceeding have pointed out, customers are increasingly sophisticated consumers of CMRS services. For example, they typically seek to leverage providers against one another in order to obtain the most favorably-priced service.[6] In order for customers to continue to benefit from this competitive environment, they need the information offered by CMRS providers based upon CPNI, which is the best source of customer network usage information and

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4/ 47 C.F.R. § 64.2005(b)(1).

5/ 47 C.F.R. § 64.2005(b)(3).

6/ See, e.g., CTIA at p. 40. References are to petitions for reconsideration unless otherwise indicated.

the best tool for projecting the customer's future telecommunications needs. The ability of CMRS providers to market integrated services quickly and accurately benefits consumers.[7] The application of these CPNI provisions to CMRS does not reflect the realities of the CMRS marketplace, but instead, imposes paternalistic measures that do not serve CMRS consumers. Accordingly, they should not be applied to CMRS providers.[8]

II. THE CPNI RULES SUPERIMPOSE WIRELINE CONCEPTS ON WIRELESS TECHNOLOGY, RESULTING IN ARTIFICIAL, COUNTER-PRODUCTIVE REGULATORY RESTRAINTS THAT HINDER COMPETITION AND NETWORK DEPLOYMENT.

A. Restrictions Against Bundling are Inconsistent with FCC Regulatory Treatment of CMRS.

The limitation on CMRS providers' use of CPNI, contained in Sections 64.2005(b)(1) and (b)(3), is at odds with the FCC's CMRS policies.[9] Those policies, notably the policy to permit bundling of CMRS services, are a reflection of the unique technological and marketing characteristics of the CMRS industry. The restrictions on bundling of CMRS services, e.g., handset together with other CMRS services, imposed by Sections 64.2005(b)(1) and (b)(3) are directly contradictory to established FCC policies. Moreover, these restrictions do not reflect the

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7/ As parties note, service integration is critical to competitive pricing in the CMRS industry. See, e.g., CTIA at p. 7; Omnipoint at p.11.

8/ Other CPNI provisions amply protect customers' privacy. CTIA at p. 38; Omnipoint at p. 10. Moreover, given the anti-competitive effect of Sections 64.2005(b)(1) and (b)(3) as applied to CMRS providers, and in view of the fact that Section 222 of the Telecommunications Act of 1996 does not require the FCC to impose such restrictions on use of CPNI, as discussed infra, they should not be applied to CMRS.

9/ See, e.g., CTIA at pp. 21-24.

manner in which CMRS is provided.[10]

B. Unlike Wireline CPE, the CMRS Handset is an Integral Part of CMRS Service.

The limitation on use of CPNI to market CMRS handsets is premised on the incorrect assumption that wireless handsets are functionally equivalent to landline CPE. Numerous parties therefore urge the Commission to refrain, in one manner or another, from applying to CMRS providers the prohibition on the use of CPNI for marketing of mobile handsets without customer approval.[11]

Unlike the wireline handset, the CMRS handset is integral to CMRS service. More importantly, from the customer's perspective, the CMRS handset and CMRS service are inseverable; and therefore it is the customers' expectation that the handset and other services will be marketed jointly.

In view of this evidence, and in accordance with the FCC's "total service" approach to CPNI, CMRS providers should be permitted to use CPNI to market the handset to its customers without prior customer approval. Inasmuch as Section 64.2005(b)(1) arbitrarily and artificially severs the marketing of wireless handsets from CMRS services, it should not be applied to CMRS providers and their customers.

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[10]/ Comcast Cellular at p. 2; Commnet Cellular at p. 2; Omnipoint at p. 3; and Vanguard at p. 3.

[11]/ See, AT&T at p.5; BellSouth at p. 11; Comcast Cellular at p. 8; CommNet Cellular at p.2; Omnipoint at p. 3; PageNet at p. 5; PCIA at p.5; PrimeCo at p.2; Vanguard at p.9; GTE Comments at p. 8, n.27; CTIA at p. 18; 360 at p. 6, Comcast Cellular at p. 2&8; CommNet Cellular at 10; Frontier at p. 11, Omnipoint at p. 3, PageNet at p.5, PCIA at p. 5; PrimeCo at p. 2; SBC at p. 2; and Vanguard at p. 9.

C. The "Win-Back" Limitation Is Anti-Competitive and Hinders Customer Access to New, Competitively-Priced CMRS Services.

As has been amply demonstrated, it makes no sense to restrict providers from using CPNI to regain or "win-back" their customers. Such a restriction defeats customers' expectation that providers will design better service offerings in order to win them back.[12] Customers benefit when providers aggressively compete for their business. They benefit further when a provider knows the customers' service needs, and can utilize that knowledge to put together a service package that will meet those needs at a competitive price. Section 64.2005(b)(3) of the CPNI rules prevents CMRS providers from meeting customers' expectations.

Also, as has been demonstrated, the ability to win back customers is especially critical in the CMRS industry, where there is considerable "churn."[13] This churn contributes to a highly competitive industry, and works in the customer's favor. It therefore makes no sense to limit CMRS providers' use of CPNI for purposes of enticing customers to return.

D. It is Inconsistent and Arbitrary to Allow Bundled Directory Assistance, But Not Information Services.

In view of the evidence on the record that information services are integral to basic CMRS services, even more so than directory assistance service[14], the Commission's decision to assign "information services" to the category of services for which use of CPNI requires customers' prior

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[12]/ 360 at p. 10; ALLTEL at p. 7; AT&T at p. 2; Bell Atlantic at p. 16; BellSouth at p. 16; Comcast at p. 16; Frontier at p. 7; GTE at p. 32; Omnipoint at p. 19; PageNet at p. 2; PCIA at p. 5; PrimeCo at p. 9; SBC at p. 8; USTA at p. 6; Vanguard at p. 13; and CTIA at p. 10.

[13]/ See, e.g., CTIA at p. 11; 360 at p. 10.

[14]/ "CMRS information services are far more integrated into telecommunications services than directory assistance." GTE Comments at p. 8, citing Omnipoint at p. 6.

authorization, yet permit directory assistance to be marketed using CPNI without customers' prior authorization is inconsistent and arbitrary.

As the record demonstrates, and for the reasons stated herein, there is no statutory or policy basis for segregating information services pursuant to Section 64.2005(b)(3) from CMRS services for purposes of protecting CPNI.

III. Section 222 of the Telecommunications Act of 1996 Does Not Compel The Commission To Enact CPNI Rules That Are Inconsistent With Technological and Marketplace Realities.

The Commission's implementation of Section 222 ignores the current CMRS marketplace and customer expectations. Moreover, the Commission fails to maintain the careful balance Congress established between privacy interests and competitive interests. As demonstrated by the record in this proceeding, the Commission is jeopardizing the vigorously competitive wireless marketplace and undermining the pro-competitive objective of the law.[15] The Commission has completely ignored the technological, competitive, and regulatory differences between the wireline and wireless markets. Rather than advance the competition that has developed in the wireless marketplace through the integrated service and equipment offerings that CMRS carriers provide, Sections 64.2005(b)(1) and (b)(3) stifle competition and the development of new service and equipment offerings. In furtherance of the objectives of Section 222, and consistent with marketplace and technological realities, the referenced CPNI rules should be revised or eliminated for CMRS providers.

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[15]/ See, e.g., CTIA at p. 14.

A. Section 222 Does Not Require the Commission to Bifurcate CMRS Services and Equipment in the Manner Prescribed by Rule Section 64.2005(b)(1).

One of the key goals expressed by Congress in Section 222 is that CPNI should be used consistent with customer expectations, i.e., where there is an existing service relationship. Nothing in Section 222 requires or supports the Commission's conclusion that mobile handsets and wireless information services are outside the CMRS carrier-customer relationship. As parties in this proceeding have indicated, evidence demonstrates that CMRS handsets and information services are integrated "telecommunications services" and, even under the Commission's interpretation of Section 222, do not require prior customer notification.[16] Instead, the Commission's implementation of Section 222 promotes customer confusion, disrupts existing CMRS carrier-customer relationships, and dampens competition. Accordingly, the Commission should revise its rules consistent with Congressional directives and the record in this proceeding.

B. The CPNI Rules Are Derived From A Narrow And Flawed Interpretation Of Section 222.

As parties in this proceeding have demonstrated, the Commission adopted a narrow interpretation of Section 222.[17] The Commission found that, under Section 222(c)(1)(B), CPE is not a "service [ ] necessary to, or used in the provision of such telecommunication service" and that the law, therefore, required it to restrict CMRS providers from using CPNI to market CMRS-related equipment.[18] In adopting its CPNI rules, the Commission distinguishes Title II "telecommunications services" and CPE, but fails to recognize that, unlike wireline service, Title

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[16]/ Id. at p. 26.

[17]/ Id. at p. 14.

[18]/ CPNI Order at ¶75; see also CTIA at p. 25.

III CMRS services encompass mobile equipment. The forced separation of CMRS equipment from wireless transmission service required under the Commission's rules impedes CMRS industry practices that for years have advanced competition and benefitted wireless consumers. Accordingly, the CPNI rules should be revised or eliminated for CMRS providers.

IV. The "Flag" And "Tag" Computer Safeguards Are Unduly Burdensome To Small Carries And Unnecessary To Protect Their Customers' Privacy.

Based on the record in this proceeding, the Commission should eliminate its computer-driven safeguard requirements, i.e., the electronic audit mechanism ("tags") and software flags ("flags").[19] At a minimum, small and rural wireless carriers should not be subject to these costly and unnecessary requirements.

A. There Is Overwhelming Support In This Proceeding For Elimination Of The Commission's Computer-Driven Safeguard Requirements.

The record demonstrates that these CPNI requirements are costly, burdensome, and unnecessary to promote the goals of Section 222.[20] The costs of implementing the tags and flags would reach hundreds of millions of dollars[21] and would potentially cost over one hundred dollars per customer line.[22] In addition, the tag requirement would create an annual data storage amount

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[19]/ 47 C.F.R. §64.2009(a) and (c).

[20]/ See, e.g., Airtouch Comments at p. 4; Ameritech Comments at p. 3; Arch Comments at p. 5; AT&T Comments at pp. 13 &17; Bell Atlantic Comments at p. 11; C&W Comments at p. 7; E.Spire Comments at p. 5; GTE Comments at p. 17; Intermedia Comments at p. 12; and NTCA Comments at p. 2.

[21]/ See, e.g., AT&T Comments at pp. 16 & 18.

[22]/ See, e.g., BellSouth Comments at p. 10.

in excess of 100 trillion bytes of information[23] which would slow and otherwise impair data retrieval by carriers.[24] Contrary to the Commission's presumption that the computerized safeguard requirements "are not unduly burdensome,"[25] the overwhelming opposition to the Commission's flags and tags requirement warrants review and revision of these requirements. Moreover, the record demonstrates that these safeguards are not necessary to protect consumer privacy.[26]

B. MCI's Support of the Flags Requirement is not Relevant for Small, Rural Wireless Carriers.

MCI, which sought reconsideration of the Commission's tag requirement, opposes requests by parties in this proceeding to eliminate computer safeguards other than tags, e.g., flags. It is not surprising that a large carrier like MCI finds the compliance safeguards other than the tag requirement "quite reasonable and necessary for all carriers."[27] MCI submits that absent a compelling cost-benefit comparative analysis, "the Commission should assume that the elimination or modification of the audit trail requirement would reduce the burden on all carriers to such an extent that the remaining safeguards would not pose an unreasonable burden."[28] Based on the

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[23]/ See, e.g., GTE Comments at p. 18.

[24]/ See, e.g., AT&T Comments at p. 15.

[25]/ CPNI Order at ¶194.

[26]/ See, e.g., Airtouch Comments at p. 6; Arch Comments at p. 5; AT&T Comments at p. 14; Bell Atlantic Comments at p. 11; GTE Comments at p. 18; Intermedia Comments at p. 10; and US West Comments at p. 10.

[27]/ MCI Comments at p. 51.

[28]/ MCI Comments at p. 52.

ample record in this proceeding, however, both computer driven requirements are independently burdensome and costly for small, rural, and wireless carriers. Contrary to MCI's unsubstantiated assertions, elimination of the tags requirement does not reduce or eliminate the costs and burdens associated with the flags requirement. Further, small and rural carriers have demonstrated that these requirements are unnecessary in light of the way they conduct business.[29] MCI's position on this issue does not alter the fact that both computer driven safeguard requirements are overly burdensome and costly for small, rural, and wireless carriers. Accordingly, the Commission should revise its rules to eliminate both the flags and tags requirements, at a minimum, for small, rural, and wireless carriers.

In furtherance of Congressional goals and marketplace reality, RCA submits that the Commission should revise or eliminate its CPNI rules as set forth herein.

Respectfully submitted,

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29/ NTCA Comments at pp. 4-5; Independent Alliance at pp. 3-5.

CERTIFICATE OF SERVICE

I, Colleen von Hollen, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that on this 6th day of July, 1998, a copy of the foregoing Reply Comments of Rural Cellular Association was sent by first class, postage prepaid, U.S. mail, to the following:

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